IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1384 OF 1991
ALONGWITH
WRIT PETITION NO.2056 OF 1991

W.P.No.1384/91 :

Suresh Prabhakar Sule
& Anr. ..Petitioners.

Vs.

State of Maharashtra
& Ors. ..Respondents.

W.P.No.2056/91 :

Dr.Prakash Pundalik Patil ..Petitioner.

Vs.

State of Maharashtra & Ors...Respondents.

Mr.K.S.Bapat, Advocate for the Petitioners.

Mr.P.M.Mokashi, A.G.P. for Respondent No.1 State of Maharashtra.

Mr.V.D.Patil for Respondent Nos.2 and 3.

Mr.C.J.Sawant for Respondent No.4.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 14TH JANUARY, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

As the reliefs claimed and the facts in both the Petitions are similar, we have decided, with the

consent of the parties, to dispose of both the Writ Petitions by this common judgment. For convenience, we will refer to the facts in Writ Petition No.1384 of 1991.

2. Respondent No.2 is the Jagat Vidya Co-operative Housing Society Ltd. (hereinafter referred to as the said society). Respondent Nos.3, 4 and 5 are members of Respondent No.2 and allotees as such of flats in the building constructed by Respondent No.2. It is pertinent to note that no reliefs have been claimed against Respondent Nos.3, 4 and 5. Nor have any allegations been made against them.

3. The Petitioners have sought a Writ of Mandamus directing the first Respondent to communicate the approval allegedly granted by the first Respondent to their names as members of Respondent No.2 and, in the alternative, directing the first Respondent to grant approval to their being members of Respondent No.2. The Petitioners have also sought a Writ of Mandamus directing Respondent No.2 to recommend to Respondent No.1 their names for membership of Respondent No.2.

4. The Petitioner’s grievance is that the society,

Respondent No.2, agreed to include them as its members and that Respondent No.1 approved the same. They were entitled, therefore, according to them, to be allotted a flat in the building to be built on the land allotted by Respondent No.1 to Respondent No.2.

5. The Petitioner's case is that one Shankarrao Geddam, G.S.Chumble and the Petitioner in Writ Petition No.2056 of 1991 came together in 1973 with a view to form a Co-operative Housing Society. At the first meeting of these promoters, it was decided to approach Respondent No.1 for allotment of a suitable plot of land. The said Geddam was appointed as the Chief Promoter of the society. Respondent No.1 in exercise of its powers under the provisions of Maharashtra Land Revenue Code and under Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971, by an order dated 13th December, 1974 allotted a plot of land to the proposed society on the terms and conditions mentioned therein. It was stipulated, inter-alia that the society should forward to the Government a list of members alongwith the necessary information to enable the Government to scrutinise their eligibility; that the society should give an

undertaking that its members should be approved by the Government and that the society should agree to abide the terms and conditions of the grant of land which would be imposed by the Government.

6. It is a common ground that the membership of the society was meant only for non-resident Indian, doctors, technicians and other professionals who had been staying abroad but were eager to return to India. The Petitioners admittedly are not N.R.Is.

7. It is necessary therefore to refer to the basis on which the Petitioners claim to be entitled to membership in the said society. According to them, at a meeting of the society held on 1.2.1975 it was decided that nine more persons should be invited to join the society in order to conform to the requirement of having atleast twelve members to form a co-operative society. The decision was also taken with a view to raise a sum of Rs.3,63,000/- demanded by the said order dated 13.12.1974 issued by Respondent No.1. At the fifth meeting of the society held on 5.3.1975 it was unanimously decided to accept nine members including the Petitioners as promoters. It is however pertinent to note that at the said meeting a point was raised for

consideration regarding the entitlement inter-alia of the Petitioners, to be accepted as members in view of the condition imposed by Respondent No.1 that membership would be open only to N.R.Is. Respondent No.2 resolved unanimously that this practical difficulty be placed before the Government at the proper time after registration of the society with a request to confirm the promoters including the Petitioners as members.

8. Thereafter, the Petitioners were called upon to make certain payments which they did. On 7.8.1978 the possession of the said plot was handed over by Respondent No.1 to Respondent No.2. The Petitioners have placed strong reliance upon the fact that thereafter correspondence was addressed to the Petitioners on the basis that they were members. For instance, by a letter dated 9.8.1978 the Petitioners were informed about Respondent No.1 having handed over possession of the plot to Respondent No.2 and of a "Bhoomi Puja" proposed to be performed at site and for which the Petitioners were invited with their family and friends.

9. Respondent No.2 under cover of its letter dated 16.8.1984 forwarded a cheque towards repayment of

the amounts paid by the Petitioners. The Petitioners objected to the same by letter dated 21.11.1984. The Petitioners requested copies of the correspondence by which Respondent No.2 sought approval of the list of members but it is alleged that Respondent No.2 had refused to do so. It is alleged that the promoters informed them thereafter to return the cheques and assured the Petitioners that they would once again try to persuade the Forest Department to approve their names as they were promoters of the society. The Petitioners therefore returned the said cheques and requested approval of their membership and accordingly for a flat admeasuring 1100 sq. ft. A reminder dated 15.12.1985 was addressed by the Petitioners to Respondent No.2. Respondent No.2 by a letter dated 4.1.1986 informed the Petitioners that a further set of names may be submitted to the Government for approval after receipt of the remaining area of 639 sq. mtrs. from Respondent No.1 or compensatory F.S.I. in lieu thereof. The Petitioners were informed that their names will be considered by the society to be again recommended to the Government to be included in the list of approved members.

10. Respondent No.2 thereafter by a letter dated

27.5.1989 addressed to the Chief Minister, stated that permission to construct 72 flats had been obtained; that 63 members had already been approved by Respondent No.1 and that nine flats were to be allotted to the persons on the basis of the approval of the membership by Respondent No.1. By that letter, Respondent No.2 also mentioned the name of six Non-N.R.Is. who were on the waiting list. It is pertinent to note that Respondent No.2 stated that if the Government decided that only N.R.Is. should be allotted these flats, it would give the names of suitable N.R.Is. whom the society will be willing to include as its members. Respondent No.2 stated that the question as to whether nine flats could be allotted only to N.R.Is. or to Non-R.Is. who were on the waiting list, was pending with Respondent No.1 and that since no payment had been received against the nine flats and the construction was nearing completion, Respondent No.2 was facing a financial crisis. Respondent No.2 further clearly stated that three N.R.Is. had paid the society some amounts and were on the waiting list.

11. Thus far therefore, there can be no dispute about the conduct of the Respondents. Respondent No.2 clearly placed all the facts before the

Government especially by the letter dated 27.5.1989 wherein Respondent No.2 mentioned the names of the members and their status as N.R.Is. or Non-N.R.I's. It is clear that Respondent No.2 was in need of finances as their building was nearing completion and the vacancies in membership had not been filled-up. Respondent No.2 did not show any preference for any person/persons. It is clear to us that Respondent No.2 was pursuing the matter in accordance with law and fairly in the matter of including members. Certain events transpired between 27.5.1989 and 26.10.1990 which we shall advert to after completing the narration of facts as stated in the Petition.

12. The Petitioners alleged that on 28.6.1990 they met the Revenue Secretary who informed them that their names had already been approved by Respondent No.1. By a letter dated 26.10.1990 the Petitioners informed the Principal Secretary (Revenue), Revenue and Forest Department that their names had been sent for approval on 28.6.1990 but that they had not heard anything further in the matter. They further raised a grievance that some other three names had been forwarded for approval. By a further letter dated 31.10.1990 addressed to Respondent No.2 the

Petitioners reiterated the same and stated that the Government authorities had informed that they were awaiting the letter of recommendation from Respondent No.2. The Petitioners reiterated these facts in the letter dated 1.1.1991 addressed to the Ministry of Revenue & Parliamentary Affairs. The Petitioners received a letter dated 13.2.1991 from Respondent No.1 stating that their request for getting membership of the society could not be granted as it was not recommended by the society. Thereafter, considerable correspondence ensued between the Petitioners and the Respondents during the course of which the Petitioners made several representations to Respondent No.1 to permit them to become members of Respondent No.2, in view of their association, as promoters of the society. This correspondence continued till September, 1989.

13. Nowhere do we find any obstruction having been created by Respondent No.2 for any reason whatsoever. On the contrary, on 5.9.1989 Respondent No.2 forwarded various names for the consideration of Respondent No.1 to fill-in the nine vacancies. The proposed names including those of the Petitioners were candidly included under separate categories of N.R.Is. and Non-N.R.I’s. t appears

clear to us that the only anxiety of Respondent No.2, we may add was justified, was that the vacancies be filled as otherwise Respondent No.2 was facing financial difficulties.

14. At this stage, it is necessary to know certain facts which, in fairness, the Petitioners ought themselves to have stated in the Petition itself. As they were not so stated, the Respondents mentioned the same in their affidavits in reply to the Petition.

(a). By a letter dated 19.4.1990 addressed to Respondent No.2, Original Petitioner No.1 expressed his gratitude to Respondent No.2 its efforts in getting his name approved from Respondent No.1. He acknowledged the fact that despite such efforts his name was not approved by the Government and that Respondent No.2 was prepared to return his money. Petitioner No.1 however requested Respondent No.2 to keep his money for some more time. Petitioner No.1 expressly stated that if despite further efforts the Government did not approve his name, the money should be returned to him, whereupon he would have no claim. Petitioner No.2 had also addressed an identical letter dated 19.4.1990 to Respondent No.2.

(b). Respondent No.2 by its letters, both dated 24.5.1990 addressed to the Petitioners, regretted its inability to do so and refunded the amount.

In view of this correspondence, the Petitioner would, in fact, be disentitled to claim any reliefs.

15. It is further pertinent to note that Respondent Nos.3, 4 and 5 whose names were approved for membership of Respondent No.2 by both the Respondents, are N.R.Is. and clearly eligible therefore to be members of Respondent No.2. They have been in possession of their flats after having paid the entire consideration for the same. There are no allegations against them whatsoever. the Petitioner has not alleged any mala fides against them. Indeed, there are none. There was no favouritism shown to them. There was no bias against the Petitioners qua them. No reliefs have even been claimed against them. To grant any relief to the Petitioners would involve evicting Respondent Nos.3, 4 and 5 from their flats. Apart from the fact that this would be grossly unjust, it would also be untenable in law.

16. Even assuming that the Petitioners succeed in establishing any illegality on the part of Respondent Nos.1 and 2, we do not see how they would be entitled for any reliefs against Defendant Nos.3, 4 and 5 especially by calling upon them to vacate the said flats. At the highest, the Petitioners would have a claim for damages against Respondent No.1 and/or 2. No such case has been pleaded. No such relief has been claimed. Even if such a claim has been made, it could not have been entertained in the facts and circumstances of this case in a Petition under Article 226 of the Constitution of India.

17. Faced with this situation, Mr.Naphade relied upon the affidavit in reply filed on behalf of Respondent No.1 wherein it is stated that on 22.12.1989 the names of the Petitioners were recommended by Respondent No.2; that accordingly the proposal was submitted to Respondent No.1 for approval and that the application was approved by the Government in September, 1990. This sentence is however torn out of context.

18. What followed in the affidavit is important. It is clearly stated that while the case was under

submission to the Government, the society had submitted two further letters dated 25.6.1990 and 17.8.1990 informing the Government that the society was in urgent need of funds for its construction work and as there was no bar in admitting N.R.Is., it has decided to cancel the names of the Non-N.R.Is. and substitute them with the names of three N.R.Is. The six other persons in the list of nine vacancies were already approved by the Government as they were N.R.Is.

19. Pausing here, it is obvious that as from 23.12.1999 the Government had not approved the names of nine persons, Respondent No.2 was facing financial difficulties. Respondent No.2 therefore, to avoid the non-grant of permission on the ground that the three Petitioners were Non-N.R.Is., forwarded the names of three N.R.Is. which was in accordance with the main object of the grant of allotment of land. No fault can be found on the part of Respondent No.2 for the same. It was a legitimate stand for the purpose of raising the money strictly in accordance with the original purpose for which the land was allotted.

20. The affidavit then goes on to state that upon

receipt of the names of the three N.R.Is. in place of the Petitioner, the file was re-submitted to solicit orders from the Government on the proposed changes. The names of these three persons i.e. Respondent Nos.3, 4 and 5 were thereafter approved and, accordingly, Respondent No.1 on 1.2.1991 communicated their approval to the names of Respondent Nos.3, 4 and 5 to Respondent No.2.

21. Much was sought to be made of this solitary sentence in the affidavit in reply that the proposal dated 23.12.1989 was approved by the Government in September, 1990. The so called approval was never communicated to either the Petitioner or Respondent No.2. To satisfy ourselves about the bona-fides of the Respondents, we called for the files from Respondent No.1 which we must add, were produced unhesitatingly. There was no approval in the proper sense. At the highest, there was an informal and tentative decision of Respondent No.1 to permit the Non-N.R.Is. only because it was informed that N.R.Is. were not available and to enable the society to overcome its financial difficulties. Upon being informed that N.R.Is. were available and before communicating any decision to the Respondents, the Government approved the names of

Respondent Nos.3, 4 and 5 who were, in fact, N.R.Is. in accordance with the circular of allotment itself. We are unable to find any fault with the conduct of Respondent No.1 in this regard.

22. There was no inherent right in the Petitioners to the land at any stage. No rights were created in their favour. In fact, even the benefit that they sought to derive were not because they were entitled to it, but because of a possible relaxation of the Government in view of the temporary non-availability of N.R.Is. This contingency having been over-come, the scheme was implemented for the purpose of which it was sanctioned viz. to accommodate N.R.Is. The emphasis for the scheme being for N.R.Is. is further fortified by letters dated 1.11.73 and 31.8.1983. By the letter dated 1.11.1973 Respondent No.2 acknowledged the fact that the society was especially designed to encourage highly qualified Indian scientists, engineers, technicians, doctors and other professionals who were then abroad and who desired to return to India. The scheme would also enable the country to earn foreign exchange. By the letter dated 31.8.1983 Respondent No.1 also reiterated that the scheme was "for the laudable purpose of constructing buildings to accommodate

intelligent persons of this State who had gone abroad to settle there."

23. In the circumstances, the Petition is dismissed. Rule shall stand discharged. The interim order shall stand vacated.

In the circumstances of the case, there shall be no order as to costs.